

**TITLE 23**  
ORDINANCE OF THE HOOPA VALLEY TRIBE  
HOOPA INDIAN RESERVATION  
HOOPA, CALIFORNIA

ORDINANCE NO.: 1-85, AMENDMENT NO. 2

DATE APPROVED: December 20, 1985

SUBJECT: UNEMPLOYMENT AND DISABILITY INSURANCE ORDINANCE OF THE HOOPA VALLEY TRIBE.
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WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (1) of this Constitution and Bylaws authorized the Hoopa Valley Business Council "to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians by regulating the conduct of trade and the use of disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs or his authorized representative, and,

WHEREAS: It is the desire of the Hoopa Valley Business Council to enact an Unemployment and Disability Insurance Ordinance to ensure the provision of these vital insurance protection services for all Indians of the Hoopa Valley Reservation, and,

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council does hereby adopt for implementation this Unemployment and Disability Insurance Ordinance of the Hoopa Valley Tribe and approvals required by the Commissioner or his authorized representative is requested at the earliest possible time:

(a) GENERAL PROVISIONS.

Section 1 – Title

This Ordinance shall be known as the "Unemployment and Disability Insurance Ordinance of the Hoopa Valley Tribe."

Section 2. – Findings and Purpose

- (a) The Hoopa Valley Tribe is a federally-recognized Indian Tribe, organized pursuant to a Constitution and Bylaws which were approved by the Commissioner of Indian Affairs on August 18, 1972 and exercising sovereign governmental authority over the Hoopa Valley Reservation established by Executive Order of June 23, 1876, 1 Kapp 815.
- (b) The sovereign governmental authority of the Hoopa Valley Tribe extends not only to enrolled tribal members but also to all non-members, whether Indians or non-Indians within the exterior boundaries of the Hoopa Valley Reservation with regard to any conduct which threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.
- (c) The power to levy taxes and similar exactions is an inherent and essential part of the authority of the Tribe. The sovereign power of the Tribe to tax is embodied in Article IX, Section 1 (f) of the Constitution and Bylaws of the Hoopa Valley Tribe, approved by the Commissioner of Indian Affairs on August 18, 1972.
- (d) The power to regulate the conduct of trade and the use and disposition of property upon the Reservation is also an inherent and essential part of the authority of the Tribe. The sovereign disposition of property is embodied in Article IX, Section 1(1) of the Constitution and Bylaws of the Hoopa Valley Tribe, approved by the Commissioner of Indian Affairs on August 18, 1972.

- (e) Employment by any enrolled tribal member or any non-member within the boundaries of the Hoopa Valley Reservation has a direct affect on the economic security, health and welfare of the Tribe and its enrolled members and their families, and on the Reservation itself.
- (f) Because of the uncertainties and often physically arduous nature of employment on the Reservation, unemployment insurance and disability insurance for all employees on the Reservation are necessary concomitants to the economic and social health and welfare of such employees and their families and the well being of all people on the Reservation.
- (g) Among the benefits provided by the tribal governments to tribal members and to nonmembers residing or conducting business inside the Reservation are the following: The provision of governmental services, including sewer and water systems, police and fire protection; the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and the protection of Reservation lands and resources.
- (h) Without the exercise of the Tribe's sovereign authority to tax, as implemented by this Ordinance, it is not possible for the Tribe to provide the unemployment insurance and disability insurance essential to tribal members, Indians who are not tribal members, and non-Indians who are employed inside the Reservation. Because the State of California has enacted a comprehensive unemployment insurance code governing all employers and employees in the State other than those covered under this Ordinance, and because the State's comprehensive unemployment and disability insurance scheme spreads the cost and the insurance risk over the population of California other than employers and employees governed by this Ordinance, and because the comprehensive State Unemployment and Disability Insurance Program includes all necessary mechanisms for administration and enforcement, the Tribe has determined that utilization of the State Unemployment and Disability scheme offers the best and most economic insurance protection for enrolled tribal members and all nonmembers, whether Indians or non-Indians employed inside the Reservation.
- (i) In order to provide for the health and welfare of the Tribe, its enrolled members and their families, and all persons residing or working inside the Reservation, the Hoopa Valley Business Council adopts this Unemployment and Disability Insurance Ordinance pursuant to the powers vested in it by Article IX, Section 1 (f), (j), (k), and (1) of the Constitution and Bylaws of the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, California.
- (j) Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth herein whether plainly stated or clearly apparent from the context of the language used herein.

### Section 3. – Relation to Other Tribal Laws.

All prior ordinances and resolutions of the Tribe regulating, authorizing, prohibiting or in any way dealing with unemployment and disability insurance or any matters relating to enforcement provisions contained herein, are of no further force or effect.

### Section 4. – Definitions.

As used in this Ordinance, the following definitions shall apply unless the context clearly indicates otherwise.

- (a) "Code" means the California Unemployment Insurance Code, California Statutes of 1953, Ch. 308, as amended heretofore and hereafter.
- (b) "Council" means the Hoopa Valley Business Council, governing body of the Hoopa Valley Tribe.
- (c) "Reservation" means the Square portion of the Hoopa Valley Reservation established by the Executive Order of June 23, 1876, 1 Kapp 815 and shall not include any portion of the Hoopa Valley Reservation added thereto thereafter which lies outside the Square.
- (d) "Person" or "company" herein used interchangeably, means any individual, firm, partnership, joint venture, club, company, corporation, association, society or any group of individuals acting as a unit but does not mean the United States or any political subdivision or instrumentality thereof, or the Hoopa Valley Tribe or any subordinate entity thereof.
- (e) "Unemployment insurance" and "disability insurance" mean unemployment insurance and disability insurance as defined and provided in the California Unemployment Insurance Code, California Statutes of 1953, Ch. 308, as amended heretofore and hereafter.

- (f) "Tribe " means the Hoopa Valley Tribe, a federally recognized Indian tribe, organized pursuant to a Constitution and Bylaws which were approved by the Commissioner of Indian Affairs on August 18, 1972.

All other words, terms and phrases used in this Ordinance shall have the meanings assigned to them in the Code.

#### Section 5. – Mandatory Coverage – General.

Every person who conducts business inside the Reservation shall be subject to the Code and all California law pertinent thereto as a matter of tribal law; therefore, every such person must provide mandatory unemployment insurance and disability insurance upon every employee inside the Reservation. The insurance coverage required hereby shall be a condition upon any such person's right to conduct such business inside the Reservation. The conduct of any such business inside the Reservation by any such person shall be deemed a consent to be bound by the Code of operation of tribal law. In addition, any such person must contract in writing for unemployment and disability insurance upon request by the State of California.

#### Section 6. – Mandatory Coverage –Subordinate Tribal Entities.

All subordinate entities of the Tribe must provide unemployment insurance and disability insurance upon every employee with respect to employment inside the Reservation. The insurance coverage required hereby shall be mandatory and each such subordinate entity must contract in writing for unemployment and disability insurance upon request by the State of California.

#### Section 7. – Tribal Tax Levied.

There is hereby levied upon each employer for all employment subject to this Ordinance a tribal tax in the amount of the contributions required by the Code for unemployment insurance and disability insurance coverage upon such employment of each such employee.

(a) The tax levied hereunder with respect to unemployment insurance shall be paid by the employer and shall not be deducted from wages of the employee.

(b) The tax is levied hereunder with respect to disability insurance shall be paid by the employer but may be deducted from wages of the employee.

(c) This section shall not apply to subordinate entities of the Tribe.

#### Section 8. – Manner of Compliance.

(a) Every employer, including every subordinate tribal entity, subject to this Ordinance shall register for unemployment insurance and disability insurance with the State of California pursuant to all requirements of the Code.

(b) Every employer, including every subordinate tribal entity, liable for tribal taxes levied under this Ordinance will be credited with all contributions paid to the State of California under the Code with respect to all employment subject to this Ordinance.

#### Section 9. – Status of Contributions.

All contributions deducted from employees' wages pursuant to this Ordinance shall be deemed tribal taxes and shall be held in trust by the employer for the State of California and shall be exempt from attachment, garnishment, execution or any other remedy for the collection of debts and in the event of insolvency or bankruptcy of the employer, shall not be considered any part of his assets but shall be paid to the State of California prior to the payment of any other claim against the employer.

## II. ENFORCEMENT – STATE OF CALIFORNIA.

### Section 10. – Enforcement.

With respect to every employer and every employee and all employment subject to this Ordinance, all provisions of the Code shall be applicable irrespective of any action or lack of action by the Council pursuant to this Ordinance.

### Section 11. – Validity of State Process.

With respect to the unemployment insurance and disability insurance required by this Ordinance, all state process, whether administrative or judicial, utilized in the administration or enforcement of the Code in any proceeding, whether administrative or judicial, shall be of full force and validity inside the Hoopa Valley Reservation irrespective of any action or lack of action the Council pursuant to this Ordinance.

### Section 12. – Notice to Hoopa Valley Business Council

Within five days after service of any notice of the State of California authorized by this Ordinance, the state department charged with enforcing the Code shall give notice in writing to the Council of the action taken, the person against whom the action was taken, and may include a brief summary of the action including a description of actions which could be taken by the Council to assist the State in the matter.

### Section 13. – Exhaustion of Tribal Remedies.

Enforcement of the Code by the State of California is independent of any action of the Council and does not require resort to or exhaustion of, any tribal remedies by the employer or employees involved in such enforcement.

## III. ENFORCEMENT – HOOPA VALLEY TRIBE.

### Section 14. – Civil Enforcement Hearing Before Council.

Upon notice to the Council by any person that an employer, subject to this Ordinance, has violated any provisions of the Code, such employer may be summoned to an enforcement hearing before the Council upon 20 days written notice.

#### Section 15. – Notice and Service.

Service of the Notice shall be made personally by a person not a member of the Council or by means of certified mail, return receipt requested. The Notice shall cite the employer to appear before the Council at a time and place therein specified which shall not be less than 20 days from the date of service of the Notice. Evidence of the receipt of Notice shall be kept as part of the record in the matter.

#### Section 16. – Publication of Notice.

Upon a showing to the Council that diligent efforts were made to serve the Notice on the employer and that for sufficient reasons service could not be made, the Council may allow service to be made by posting copies of the Notice in two public places in the Reservation for three weeks and by publication of a copy of the Notice and Complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Reservation. In such case the return date shall be not less than 30 days from the date of first publication.

#### Section 17. - Informal Hearing; Evidence; Attorney.

The hearing will be informal and the employer shall have the right to present evidence in his behalf, both written and oral, and may be represented by an attorney. The Council may grant continuances for good cause shown and may utilize such other procedures as the Council deems proper.

#### Section 18. - Burden and Standard of Proof.

In the hearing, the burden of proof shall be upon the Council and the standard of proof shall be the greater weight of the evidence. Notice of failure of the employer to comply with the Code shall be deemed a presumption of the facts stated in the state Notice.

#### Section 19. - Applicable Law.

In the hearing the Council shall apply any applicable law of the Tribe, the Code, any other applicable provisions of California state law pertinent to administration or enforcement of the Code, any applicable laws of the United States or regulations of the Secretary of the Interior and all customs of the Tribe not prohibited by federal law.

#### Section 20. - Evidence Standard.

The Council shall not be bound by common law rules of evidence but shall use its own discretion as to what evidence it deems necessary and relevant to the matter.

#### Section 21. - Judgment of the Council.

Subsequent to the hearing, the Council's judgment shall consist of an order of the Council assessing money damages against the employer or directing the performance or prohibition of appropriate legal acts.

Section 22. - Damages - Kind and Amount.

Damages assessed by the judgment may include all delinquent contributions required by the Code, interest thereon, attorney's fees incurred by the Council, and a civil penalty of not more than \$500.00.

Section 23. - Injunction; Collection Procedures; Disbursement.

In addition to assessment of damages, the judgment of the Council may enjoin the employer from further violations of the Code or from conducting any further business inside the Reservation. The Council may utilize any necessary collection procedures including garnishment, attachment and execution upon real and personal property pursuant to rules governing such procedures which the Council deems proper. Any delinquent contributions, interest thereon or attorneys fees collected pursuant to the Code and this Ordinance shall be disbursed by the Council to the agency of the State of California charged with administration of State Unemployment and Disability Insurance.

Section 24. - Exclusion from Reservation.

In addition to the assessment of damages as provided in this Ordinance, the Council is authorized to exclude from the Reservation temporarily or permanently, except from public highways thereon, any employer who is not an Indian, who willfully fails to comply with this Ordinance, provided, that such exclusion may not adjudged against a person authorized by federal law to be present on tribal land and provided further, that as to any person who owns land within the Reservation which is neither held in trust by the United States nor subject to restrictions against alienation posed by the United States, or is a bona fide resident on such land, such exclusion shall not bar such person from such land which he owns or on which he resides.

Section 25. - Severability.

(a) If any clause, part or section of this Ordinance shall be adjudged invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its operation to the clause, part, or section directly involved in the controversy in which such judgment was rendered.

(b) If any application of this Ordinance or any clause, part or section thereof, is adjudged invalid, such judgment shall not be deemed to render that provision inapplicable to other persons or circumstances.

Section 26. - Effective Date.

This Ordinance shall be effective as of the date of its approval by the Secretary of the Interior or his duly authorized representative.

## C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 6 were present, constituting a quorum, at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 20<sup>th</sup> day of December, 1985; and that this resolution was adopted by a vote of 5 for with 0 against; and that said resolution has not been rescinded or amended in any way.

DATED THIS 20<sup>TH</sup> DAY OF DECEMBER, 1985.

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WILFRED K. COLEGROVE, CHAIRMAN  
HOOPA VALLEY BUSINESS COUNCIL

ATTEST: \_\_\_\_\_  
DEIRDRE R. YOUNG, EXEC. SECRETARY  
HOOPA VALLEY BUSINESS COUNCIL

APPROVED:

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AREA DIRECTOR

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DATE